IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/12/2002

Coram

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM

CIVIL REVISION PETITION No.1322 of 1997

P. Sivakumar .. Petitioner

-Vs-

1. Thangammal
2. Subramanian
3. Nagarajan
4. V.P. Muthusami .. Respondents

Civil Revision Petition against the order dated 23.7.1996 made in R.C.A.No.29 of 1992 on the file of the Subordinate Judge (Rent Control Appellate Authority), Erode, reversing the order of the Principal District Munsif (Rent Controller), Erode, dated 29.6.1992 in R.C.O.P. No.13 of 1984.

!For Petitioner : Mr. M.M. sundaresh

^For Respondents : Mr. A.K. Kumarasamy

:O R D E R

Sivakumar, the landlord filed a petition for eviction on the grounds of wilful default, sub-letting and owner's occupation. The Rent Controller allowed the petition on the grounds of wilful default and owner's occupation. Aggrieved by the same, one of the sub-lessees filed an appeal before the Appellate Authority challenging the eviction. The Appellate Authority concluded that sub-lease was not proved and the appellant also has not proved that he is a tenant and therefore, dismissed the eviction petition by allowing the appeal holding that the appellant being in possession of the petition premises can be construed to be a trespasser and as such, the landlord can seek the remedy for recovery of possession through separate proceedings. Challenging the same, the landlord has filed this civil revision petition.

2. The case of the petitioner/landlord is this:
"The petition premises was purchased by one N.Muthusamy Gounder on 2 9.12.1972. Sivakumar, the present petitioner is the grandson of the said Mutusamy Gounder. The said premises was leased out to K.S. Kolandasamy Gounder on 29.12.1972 itself to run a jewellery shop on a monthly rent of Rs.200/-. From that date onwards, Kolandasamy Gounder was in possession of

the building as a tenant. The landlord Muthusamy Gounder died in November 1982 leaving a Will bequeathing the petition premises and other properties to the petitioner. Thus, the petitioner became the landlord. In November 1982, the tenant Kolandasamy Gounder also died. After his death, his wife Thangammal, the first respondent as a legal representative has to pay the rent to the petitioner, but she did not pay the rent from November 1982 and sub-leased the building to Subramanian and Nagarajan, the respondents 2 and 3 without permission of the landlord. On 28.11.1983, the petitioner/ landlord sent notice to respondents 1 to 3 demanding the delivery of possession of the petition premises terminating the tenancy by 31.12.1983 on the ground that the rent from November 1982 has not been paid. The respondents sent a reply disputing the tenancy of K.S.Kolandasamy Gounder and stating that V.P.Muthusamy, father of respondents 2 and 3 is the tenant of the premises under his grandfather and alleging that the said V.P.Muthusamy paid the rent till the end of October 1982 to the petitioner's father. V.P.Muthusamy also sent another notice on 14.11.1983 to the petitioner claiming tenancy right and offering to pay the rent from November 1983 and sent money order of Rs.200/-. The same was refused to be received. Then, V.P.Muthusamy filed a separate petition in R.C.O.P.No.1 of 1984 seeking permission for depositing the rent claiming the tenancy right in the petition premises. Thus, the first respondent not only sub-let the premises to the respondents 2 to 4, but also colluded with the other respondents in setting up tenancy falsely in favour of Muthusamy, the fourth respondent apprehending eviction. Hence, the petition for eviction on the ground that the first respondent failed to pay rent from November 1982, despite notice, and sub-let to the respondents 2 and 3 without permission and for requirement of own use.

3. During the pendency of the eviction proceedings, the said V.P. Muthusamy was ordered to be impleaded as fourth respondent. Since fourth respondent also is a sub-tenant of the first respondent, all the four are liable to be evicted from the premises.

4. The case put forward by the respondents 1 to 3 is as follows:
"The first respondent's husband never took the shop No.9 and executed a rent agreement on 29.12.1972 in favour of the grandfather of the petitioner. The fourth respondent V.P.Mutusamy alone is the tenant. He filed R.C.O.P.No.1 of 1984 for depositing the rent. V.P. Muthusamy had been doing the business in the petition premises on the basis of oral lease agreement with Muthusamy Gounder, the grandfather of the petitioner. The respondents 2 and 3 are the sons of V.P.Muthusamy, the fourth respondent. Since the respondents 1 to 3 are not the tenants, the petition for eviction as against them would not be maintainable."

5. The case of the fourth respondent is as under:
"The shops Door Nos.2,9,10 and 11 were purchased by Muthusamy Gounder, grandfather of the petitioner by the sale deeds dated 29.12.1972 and 31.3.1973. From 1.2.1973, the fourth respondent is doing business under the tenancy agreement with the grandfather of the petitioner. He had been paying the monthly rent regularly to him through the petitioner's father Palaniappa Gounder upto October 1982. After the death of Muthusamy Gounder, the fourth respondent had been paying monthly rent to Palaniappa Gounder, the father of

the petitioner, upto October 1983. After coming to know that the petitioner claimed ownership over the petition premises as a legatee under the Will executed by his grandfather, he sent notice as well as money order on 14.11.1983 to the petitioner. However, the petitioner refused to receive the rent. There is no rent agreement between Kolandasamy Gounder and Muthusamy Gounder. He was never a tenant from 19.12.1972 till his death in November 1982. The fourth respondent is a statutory tenant. He has also filed R.C.O.P.No.1 of 1984 under Section 8 of the Rent Control Act and is depositing rent without fail into Court. As such, the fourth respondent cannot be evicted on the grounds mentioned in the petition."

6. On behalf of the petitioner, the petitioner examining himself as P.W.1 examined two other witnesses as P.Ws.2 and 3 and marked Exs.P1 to P10. On behalf of the respondents, fourth respondent was examined as R.W.1 and Exs.R1 to R96 were marked.

7. On considering the materials on record, the trial Court though did not accept the evidence with reference to the lease agreement between Kolandasamy Gounder and N.Muthusamy Gounder, grandfather of the petitioner, concluded that fourth respondent is a tenant and since he made a wilful default by not paying the rent from November 1982 to October 1983 and no periodical payments have been made in R.C.O.P.No.1 of 1984 and there is no bona fide requirement for owner's occupation, it ordered for eviction. Challenging the order of eviction, the fourth respondent filed an appeal before the Appellate Authority. After hearing the parties, the Appellate Authority concluded that the the petitioner had not proved that the first respondent is a tenant after the death of Kolandasamy Gounder and consequently, there is a subletting and since the fourth respondent, who is in possession and who failed to prove that he is a tenant, is a trespasser, the petitioner has to seek remedy for recovery of possession from the fourth

respondent only in a suit and therefore, the eviction petition would not be maintainable. This order is the subject matter of challenge in this civil revision petition filed before this Court.

8.I have heard the counsel for the parties at length justifying their respective pleas.

9. I have carefully considered the submissions made by the counsel for the parties and also gone through the orders of both the authorities and the typed set containing deposition and some of the relevant documents.

10. On a careful perusal of the entire records, I am of the view that the petitioner would be entitled to eviction as there are acceptable materials to prove that the petition premises was leased out to Kolandasamy Gounder, the husband of the first respondent by Muthusamy Gounder, the grandfather of the petitioner and after the death of Muthusamy Gounder, by virtue of the Will, the petitioner has become the owner of the petition premises and despite the demand made by the petitioner for the rent from the first respondent after the death of her husband, the rent was not paid and instead, the premises was sub-let to the respondents 2 to 4. The detailed reasonings for my conclusion

could be summarised as follows.

11. According to the petitioner, the petition premises was purchased by Muthusamy Gounder, his grandfather on 29.12.1972 and leased out the said premises to K.S.Kolandasamy Gounder on the same day under Ex.P1. In November 1982, the said Muthusamy Gounder died. Before his death, he executed a Will bequeathing the petition premises and also other properties in favour of his grandson, the petitioner.

12. The fact that the petitioner became the owner of the property has been clearly proved by the petitioner by two sets of evidence. Though it was opposed by the respondents that the Will was not validly executed, the same has been proved by marking the original Will and also by examining the scribe of the Will. The second set of evidence is that the fourth respondent himself would admit the ownership of the petitioner and that was the reason why he issued the notice to the petitioner on 14.11.1983 claiming tenancy right and offering to pay the rent from November 1983 and he also sent money order to the petitioner. Therefore, the petitioner being the owner of the property is entitled to file a petition for eviction against the tenant.

13. It is the consistent case of the petitioner that Kolandasamy Gounder was the tenant under his grandfather and after the death of Kolandasamy Gounder, the petition premises was in possession of the first respondent, the wife of Kolandasamy Gounder and the petitioner after the death of his grandfather, who became the owner of the premises by virtue of the Will, demanded rent from the first respondent, the wife of the said Kulandaisamy Gounder. When the rent amount was not paid by the first respondent, he issued a notice dated 28.11.1983 pointing out the wilful default in payment of the rent. In the meantime, he came to know that she sub-let the premises to the respondents 2 and 3 and therefore, in the same notice, he informed the respondents 1 to 3 about the termination of the tenancy by 31.12.1983 and wanted them to hand over the possession on the grounds of wilful default and sub-letting the premises without permission. He also mentioned in the notice that the petition premises is required for him to conduct his own business. This was replied by the respondents 1 to 3 stating that the first respondent or her husband was never the tenant and V. P.Muthusamy, the fourth respondent was the tenant and he was paying the rent regularly.

14. In the light of the divergent contentions, the evidence of P.Ws.1 and 2 has been let in to show that the petition premises purchased by the grandfather of the petitioner on 29.12.1972 was leased out to Kolandasamy Gounder on a monthly rental bas The Rent Controller though concluded that the petitioner is entitled for eviction on the grounds of wilful default and owner's occupation as against the fourth respondent, held that the lease agreement executed between Muthusamy Gounder and Kolandasamy Gounder was not a genuine document and as such, the lease has not been proved. However, the Appellate Authority even without going into the reasons given by the Rent Controller, concluded that the said document is a genuine document by holding that the document executed between Muthusamy Gounder and Kulandasamy Gounder would apply to Kolandasamy Gounder only and not to his legal representatives.

In my opinion, both these findings are wrong.

15. The Rent Controller would merely reject Ex.P1, the lease deed on the simple reason that the signatures of Kolandasamy Gounder found in three pages are not similar. But, on going through Ex.P1, the lease deed, I do not find any difference between the signatures in three pages in Ex.P1.

16. Even though the Court has power to compare the signatures by invoking Section 73 of the Evidence Act, there must be some admitted signature of the parties on the basis of which a comparison will have to be made. It is held in FAKHRUDDIN v. THE STATE OF MADHYA PRADESH (A.I.R.1967 S.C.1326) is as follows:
"Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitting writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself."

17. The above principles have been reiterated in SOMASUNDARAM v. PALANI (1999(III) CTC 156 = 2000(1)L.W.511) and MARAPPA GOUNDER (DIED) AND OTHERS v. KANDASAMY (2002(4) L.W.252).

18. Therefore, the Court can compare the signature of the parties only with the admitted signature in the documents. But in this case, according to the respondents, the signatures found in 3 pages of Ex. P1 are not admitted signatures. Therefore, on mere comparison among the signatures of the husband of the first respondent found in Ex.P1, the said document cannot be rejected. On the other hand, as I indicated above, there is no difference in the signatures in Ex.P1.

19. Moreover, the petitioner's side need not fabricate the document by putting the signature of the party in a different way in the same document. However, this finding, in a way, has been set aside by the Appellate Authority by holding that the said document executed between the grandfather of the petitioner and Kolandasamy Gounder would not be of use to file a petition for eviction against the first respondent, the wife, who is merely a legal heir.

20. It is not the case of the petitioner that he filed eviction petition against the first respondent treating her only as a legal heir of the tenant. On the other hand, it has been specifically stated in the notice dated 28.11.1983 sent to the first respondent that after the death of her husband, recognising her as a tenant, he demanded the rent, but she did not pay and instead, she sub-let the premises to the respondents 2 and 3. The pleading in the petition as well as the evidence given by P.Ws.1 and 2 would clearly show that the petitioner demanded rent from the first respondent after the death of her husband. Therefore, it cannot be said that the eviction petition is not maintainable against the first respondent.

21. It is the case of the petitioner that the premises was sub-let to the respondents 2 and 3 by the first respondent. It is the case of the

respondents 1 to 4 that the husband of the first respondent was never the tenant, that she did not sub-let and that the fourth respondent was the direct tenant under the petitioner's grandfather and had been paying the rent periodically.

22. Though separate counters have been filed by the respondents 1 to 3, no evidence has been adduced on their behalf. The first respondent did not choose to come to box. It is the case of the fourth respondent that he was the tenant under Muthusamy Gounder and had been continuously paying the rent

to him. Admittedly, no documents have been produced or any other independent witness was examined to show that he was the tenant under Muthusamy Gounder and made periodical payments of rent to him.

23. It is the further contention of the fourth respondent that after the death of Muthusamy Gounder, he had been paying the rent amount to the petitioner's father Palaniappa Gounder. To prove this, neither Palaniappa Gounder was examined nor any document was filed. But, the documents filed by the fourth respondent would clearly show that he has been in possession of the premises and he has correspondence with the officials concerned with reference to his running the shop at the petition premises.

24. It is also noticed that he has installed a telephone in his name in the petition premises. Even though there are sufficient materials to show that the fourth respondent is in possession of the premises, the Appellate Authority came to the conclusion that the fourth respondent cannot be construed to be a tenant under the petitioner as the lease agreement executed between Muthusamy Gounder and the fourth respondent was not proved. Ultimately, it was held that the fourth respondent is only a trespasser and that therefore, the petitioner has to seek remedy in some other forum to get back the possession of the premises.

25. This finding is totally wrong, in view of the fact that the petitioner has proved by both documentary evidence and oral evidence that there is a lease agreement between his grandfather and Kolandasamy Gounder and after the death of Muthusamy Gounder, the petitioner became the owner by virtue of the Will and recognising the wife of Kolandasamy Gounder as a tenant, he demanded the rent from the first respondent, who did not pay the rent, but showed the finger at the fourth respondent as a tenant.

26. Once the case of the petitioner, as mentioned above, is accepted, it has to be automatically held that the fourth respondent is a stranger, who is in occupation of the premises belonging to the petitioner. As a matter of fact, the fourth respondent sent a notice on 14.1 1.1983 to the petitioner claiming tenancy right and offering to pay the rent from November 1983. He has also sent money order which was refused to be received. Thereafter, he filed R.C.O.P.No.1 of 1984 for permission to deposit the rent claiming tenancy right recognising the petitioner as a landlord. The said petition was dismissed by the Rent Controller. It is noticed that he filed an appeal before the Appellate Authority against that order. The same also was dismissed. Against both the orders, the fourth respondent V.P. Muthusamy

filed C.R.P.No.659 of 1997 before this Court and the same was dismissed holding that the fourth respondent was not the tenant.

27. In this context, it would be worthwhile to refer to the relevant portion of the observations made by this Court in the said civil revision petition:

"It is seen that respondents also filed an application for eviction and that application was also dismissed. It has been found by authorities below that petitioner has failed to prove his status as tenant. Admittedly there is no written arrangement between parties. Except for alleged payment by money order which was refused to be accepted, there is no other evidence to show that the amount was paid as rent. Petitioners claim to be tenant under respondent's father who was alive on the date when evidence was taken by Rent Controller. He would have been the best person to speak about the rental arrangement if any. For reasons best known to petitioner, he was not examined. Merely because petitioners claim to be in possession, an inference cannot be drawn that they are tenants and respondent herein is landlord. Parties are close relations. Both authorities have found that late Kulandaisamy Gounder is none other than the brother-in-law of petitioner and only because of that relationship, petitioner came to occupy the scheduled premises. Mere occupation of premises will not create landlord-tenant relationship since it is based on contract. That contract is not proved in this case."

28. The above finding by this Court in the civil revision petition, in my view, is correct in view of the materials available on record in this case. Once the petitioner has proved that Kolandasamy Gounder was the tenant and after his death, the rent was demanded from his wife and then, without paying the rent, she sub-let the premises to third parties, it is for the person who is in possession of the petition premises to explain as to how he came into possession.

29. As indicated above, the fourth respondent who is in possession has not proved his tenancy right in respect of the petition premises. When such is the case, the fourth respondent becomes a stranger and he has to prove how he came into possession of the petition premises. Admittedly, the fourth respondent is the fat her of respondents 2 and 3 and brother-in-law of Kolandasamy Gounder. As indicated by this Court in C.R.P.No.659 of 1997, after the death of Kolandasamy Gounder, the respondents 2 to 4 came into possession of the petition premises by way of sub-lease from his wife, the first respondent herein.

30. When a similar question was raised before this Court in MALLIKA v. A.P.KATHIJA BEEVI AND 4 OTHERS (1998(1) L.W.44), this Court ultimately held that the eviction petition is maintainable and the petitioner is entitled for eviction on the ground of sub-letting. The following is the observation: "When the landlord has proved that a stranger is in possession and is doing business in the premises, it is for the tenant to substantiate the circumstances under which the stranger came into occupation. Mere denial may not be sufficient. The arrangement between the tenant and the second

counter-petitioner is a secret arrangement and the details of the same can be spoken only by them. Burden on the landlord is discharged when he proves that a stranger is in exclusive possession at least in respect of a portion of the premises. The inference drawn by the Authorities below that the second counter-petitioner has exclusive possession, according to me, is the only conclusion that can be arrived at in the circumstances of the case."
This observation would squarely apply to the present facts of the case.

31. It was contended that the sale deed dated 29.12.1972 is only in respect of half portion and the other portion was sold by the fourth respondent in favour of Muthusamy Gounder, grandfather of the petitioner on 31.1.1973 and as such, the lease agreement would not cover the entire property. But, the reading of Ex.P1 would clearly show that it would relate to the petition premises.

32. Thus, it is clear that the finding rendered by the Appellate Authority would suffer from the infirmity committed due to misunderstanding the law and the evidence available on record. It is true that the scope of the revision under Section 25 of the Rent Control Act would not normally permit this Court to reappreciate the evidence. But, it is settled law that the revisional jurisdiction of the High Court under the Rent Control Act is wider than Section 115 of the Code of Civil Procedure. This Court finds illegality or impropriety in the order passed by the Appellate Authority. This Court would certainly correct the same by reversing such order.

33. In this context, it would be worthwhile to refer to the observation made by the the Supreme Court in M/S.SHAW WALLACE AND CO. LTD. v. GOVINDAS PURUSHOTHAMDAS AND ANOTHER (2001(3)L.W.224) which is as follows:
"On a plain reading of Section 25 of the Act, it is clear that the revisional jurisdiction vested in the High Court under that Section is wider than Section 115 of the Code of Civil Procedure. The High Court is entitled to satisfy itself as to the regularity of the proceeding of the correctness, legality or propriety of any decision or order passed therein and if, on examination, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass such orders accordingly."
34. The said principles have been laid down in the decisions rendered by this Court in T.V.JAGATRAKSHAGAN AND OTHERS v. N.FUTAREE BAI AND OTHERS (2000(3) L.W.195) and ISPAHANI, S.M. v. HARRINGTON HOUSE SCHOOL (2000(I) CTC 634).

35. In view of the above fact and legal situation, I am of the considered opinion that the petitioner is entitled to maintain a petition for eviction and ultimately, the fourth respondent, who is in possession of the property and the respondents 2 and 3, the sons of the fourth respondent, are liable to be evicted under the grounds of wilful default and sub-letting and accordingly ordered. The ground of owner's occupation need not be gone into, as the eviction has been ordered on the basis of other grounds. Time for vacating the petition premises two months.

35. Therefore, the civil revision petition is allowed in the above

terms. No costs.

Index:Yes
Internet:Yes
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To
1) The Subordinate Judge (Rent Control Appellate Authority), Erode.
2) The Principal District Munsif (Rent Controller), Erode.